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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,241	10/08/2001	Steve Kaplan	MULTP106US	5352

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EXAMINER

WILKENS, JANET MARIE

ART UNIT PAPER NUMBER

3637

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/973,241

Applicant(s)

KAPLAN ET AL.

Examiner

Janet M. Wilkens

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11,13,15-20 and 29 is/are rejected.
- 7) ☒ Claim(s) 3,12 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 10/5/04.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**While doing a prior art search for an unrelated application, reference 3,210,456 to Skubal was discovered. After receiving the after-final amendment filed September 22, 2004 and reviewing both the amendment and the reference, it was decided that withdrawal of the finality of the previous Office action was in order. Art rejections using the Skubal reference follow. The delay in finding this reference and any inconvenience are regretted.**

### ***Drawings***

The drawings are objected to because: since the false top is being positively claimed, it needs to be positively shown (not just shown in phantom). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be

notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-6 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Skubal. Skubal teaches a cabinet (Figs. 1 and 2) comprising: a chamber with side walls (5,7) and a bottom plate/base (9) having slots (83) and a top cap (13) with a canted ceiling (41), a first overhang portion (51; right side of Fig. 2) having air flow openings (86), and a second overhang portion (53; left side of Fig. 2) having air flow openings (86).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2, 4-11,13, 15-20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maroney et al in view of Skubal. Maroney teaches a cabinet (10)

comprising: a chamber (16) and a drawer (18) in the chamber with surfaces (60,58) defined therein. The drawer includes air flow openings (28, 29) in the surfaces which are positioned to define positions in the area. The cabinet further teaches a bottom plate/base (34) with openings and a cable retainer (72). Please note: the batteries are not being positively claimed. Limitations in intended use/"for" statements are given no weight in the claims and when "battery" is used as an adjunct, it is also given no weight in the claims. Furthermore, the cabinet/drawers of Maroney are capable of storing numerous articles, including batteries; the openings capable of providing indicators to where these articles are located/positioned. For claims 1 and 2, Maroney fails to teach that its ceiling/top cap is canted, has a first overhang portion with air flow openings and has a second overhang portion with air flow openings. Skubal teaches a cabinet (Figs. 1 and 2) comprising: a chamber with side walls (5,7) and a top cap (13) with a canted ceiling (41), a first overhang portion (51; right side of Fig. 2) having air flow openings (86) and a second overhang portion (53; left side of Fig. 2) having air flow openings (86). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cabinet of Maroney by using an alternate ceiling/top cap thereon, i.e. using the ceiling/top cap of Skubal thereon instead of the ceiling/ top cap presently used, since these ceilings/top caps are functional equivalents and it appears that either ceiling/top cap would work equally well on the cabinet of Maroney. Two advantages of having the top cap of Skubal on the cabinet of Maroney, being aesthetic reasons (the canted ceiling providing a distinct look) and removability features (since the top cap of

Skubal is removably affixed to the side walls, the vents/screens/openings therein can be easily cleaned/exchanged (in case of screens), etc. when the top cap is removed).

For claim 15, Maroney in view of Skubal fails to teach a false top on the cabinet. The examiner takes Official notice that cabinets having second/false top members are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a top onto to top of Maroney in view of Skubal, for aesthetic purposes.

#### ***Allowable Subject Matter***

Claims 3, 12 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

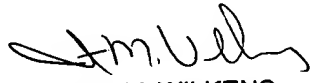
Even if batteries were being positively claimed, it would be obvious to position the openings in the drawers of Maroney at any of a number of different locations/in different configurations, in order to best serve the stored articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-2204. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkins  
October 4, 2004

  
JANET M. WILKENS  
PRIMARY EXAMINER  
AU 3637